

ASSEMBLY BILL

No. 1500

Introduced by Assembly Member Dickinson

January 13, 2014

An act to repeal and add Section 22963 of the Business and Professions Code, to add Section 119406 to the Health and Safety Code, and to repeal Section 30101.7 of the Revenue and Taxation Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1500, as introduced, Dickinson. Cigarettes, tobacco products, and electronic cigarettes.

Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, among other things, prohibits any person from distributing or selling tobacco products via the United States Postal Service, or any other public or private postal or package delivery service, to any purchaser who is a minor. The STAKE Act also requires a specified distributor or seller, among other things, to verify that a purchaser of tobacco products is 18 years of age or older, and to telephone the purchaser after 5 p.m. to confirm the order prior to shipping the tobacco products.

This bill would repeal those provisions

Existing law makes it unlawful for a person to sell or otherwise furnish an electronic cigarette, as defined, to a person under 18 years of age and makes a violation punishable as an infraction, as specified.

This bill would, with certain exceptions, prohibit shipping or transporting cigarettes, tobacco products, or electronic cigarettes to persons in California. The bill would establish civil penalties for a violation of that prohibition and would authorize the State Board of

Equalization or a law enforcement agency to seize and take possession of the cigarettes, tobacco products, or electronic cigarettes. The bill would require any cigarettes, tobacco products, or electronic cigarettes seized by, or delivered to, the board to be deemed forfeited to the state and would require the board to comply with specified procedures in handling the forfeited products.

Existing law, the Cigarette and Tobacco Products Tax Law, prohibits, except under specified circumstances, the retail sale of cigarettes in California unless the sale is a vendor-assisted, face-to-face sale, as defined.

This bill would repeal those provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The transfer and shipment of cigarettes, tobacco products,
- 4 and electronic cigarette products (e-cigarettes) sold via the Internet
- 5 or by telephone or by mail order, or by any other means in which
- 6 the seller is not in the physical presence of the buyer, to residents
- 7 of this state poses a serious threat to public health, safety, welfare,
- 8 and economy of the state.
- 9 (b) When cigarettes, tobacco products, and e-cigarettes are
- 10 shipped directly to a consumer, adequate proof that the consumer
- 11 is of legal age to purchase the products cannot be obtained by the
- 12 vendor, thereby enabling sellers of cigarettes, tobacco products,
- 13 and e-cigarettes to evade provisions of law designed to prevent
- 14 sales to minors.
- 15 (c) By preventing shipment of cigarettes, tobacco products, and
- 16 e-cigarettes directly to consumers, the state will be better able to
- 17 measure and monitor cigarette and tobacco products consumption,
- 18 determine the public health and fiscal consequences of smoking,
- 19 and keep these products out of the hands of children.
- 20 (d) Existing penalties for cigarette and tobacco products
- 21 bootlegging have been an inadequate deterrent.
- 22 SEC. 2. Section 22963 of the Business and Professions Code
- 23 is repealed.

1 ~~22963. (a) The sale, distribution, or nonsale distribution of~~
2 ~~tobacco products directly or indirectly to any person under the age~~
3 ~~of 18 years through the United States Postal Service or through~~
4 ~~any other public or private postal or package delivery service at~~
5 ~~locations, including, but not limited to, public mailboxes and~~
6 ~~mailbox stores, is prohibited.~~

7 ~~(b) Any person selling or distributing, or engaging in the nonsale~~
8 ~~distribution of, tobacco products directly to a consumer in the state~~
9 ~~through the United States Postal Service or by any other public or~~
10 ~~private postal or package delivery service, including orders placed~~
11 ~~by mail, telephone, facsimile transmission, or the Internet, shall~~
12 ~~comply with the following provisions:~~

13 ~~(1) (A) Before enrolling a person as a customer, or distributing~~
14 ~~or selling, or engaging in the nonsale distribution of, the tobacco~~
15 ~~product through any of these means, the distributor or seller shall~~
16 ~~verify that the purchaser or recipient of the product is 18 years of~~
17 ~~age or older. The distributor or seller shall attempt to match the~~
18 ~~name, address, and date of birth provided by the customer to~~
19 ~~information contained in records in a database of individuals whose~~
20 ~~age has been verified to be 18 years or older by reference to an~~
21 ~~appropriate database of government records kept by the distributor,~~
22 ~~a direct marketing firm, or any other entity. In the case of a sale,~~
23 ~~the distributor or seller shall also verify that the billing address on~~
24 ~~the check or credit card offered for payment by the purchaser~~
25 ~~matches the address listed in the database.~~

26 ~~(B) If the seller, distributor, or nonsale distributor, is unable to~~
27 ~~verify that the purchaser or recipient is 18 years of age or older~~
28 ~~pursuant to subparagraph (A), he or she shall require the customer~~
29 ~~or recipient to submit an age-verification kit consisting of an~~
30 ~~attestation signed by the customer or recipient that he or she is 18~~
31 ~~years of age or older and a copy of a valid form of government~~
32 ~~identification. For the purposes of this section, a valid form of~~
33 ~~government identification includes a driver's license, state~~
34 ~~identification card, passport, an official naturalization or~~
35 ~~immigration document, such as an alien registration receipt card~~
36 ~~(commonly known as a "green card") or an immigrant visa, or~~
37 ~~military identification. In the case of a sale, the distributor or seller~~
38 ~~shall also verify that the billing address on the check or credit card~~
39 ~~provided by the consumer matches the address listed in the form~~
40 ~~of government identification.~~

~~(2) In the case of a sale, the distributor or seller shall impose a two-carton minimum on each order of cigarettes, and shall require payment for the purchase of any tobacco product to be made by personal check of the purchaser or the purchaser's credit card. No money order or cash payment shall be received or permitted. The distributor or seller shall submit to each credit card acquiring company with which it has credit card sales identification information in an appropriate form and format so that the words "tobacco product" may be printed in the purchaser's credit card statement when a purchase of a tobacco product is made by credit card payment.~~

~~(3) In the case of a sale, the distributor or seller shall make a telephone call after 5 p.m. to the purchaser confirming the order prior to shipping the tobacco products. The telephone call may be a person-to-person call or a recorded message. The distributor or seller is not required to speak directly with a person and may leave a message on an answering machine or by voice mail.~~

~~(4) The nonsale distributor shall deliver the tobacco product to the recipient's verified mailing address, or in the case of a sale, the seller or distributor shall deliver the tobacco product to the purchaser's verified billing address on the check or credit card used for payment. No delivery described under this section shall be permitted to any post office box.~~

~~(e) Notwithstanding subdivisions (a) and (b), if a seller, distributor, or nonsale distributor, complies with all of the requirements of this section and a minor obtains a tobacco product by any of the means described in subdivision (b), the seller, distributor, or nonsale distributor is not in violation of this section.~~

~~(d) For the purposes of the enforcement of this section pursuant to Section 22958, the acts of the United States Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others, and the acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's contents, are not unlawful and are not subject to civil penalties.~~

~~(e) (1) (A) For the purposes of this section, a "distributor" is any person or entity, within or outside the state, who agrees to distribute tobacco products to a customer or recipient within the state. The United States Postal Service or any other public or~~

1 private postal or package delivery service are not distributors within
2 the meaning of this section.

3 (B) A “nonsale distributor” is any person inside or outside of
4 this state who, directly or indirectly, knowingly provides tobacco
5 products to any person in this state as part of a nonsale transaction.
6 “Nonsale distributor” includes the person or entity who provides
7 the tobacco product for delivery and the person or entity who
8 delivers the product to the recipient as part of a nonsale transaction.

9 (C) “Nonsale distribution” means to give smokeless tobacco or
10 cigarettes to the general public at no cost, or at nominal cost, or
11 to give coupons, coupon offers, gift certificates, gift cards, or other
12 similar offers, or rebate offers for smokeless tobacco or cigarettes
13 to the general public at no cost or at nominal cost. Distribution of
14 tobacco products, coupons, coupon offers, gift certificates, gift
15 cards, or other similar offers, or rebate offers in connection with
16 the sale of another item, including tobacco products, cigarette
17 lighters, magazines, or newspapers shall not constitute nonsale
18 distribution.

19 (2) For the purpose of this section, a “seller” is any person or
20 entity, within or outside the state, who agrees to sell tobacco
21 products to a customer within the state. The United States Postal
22 Service or any other public or private postal or package delivery
23 service are not sellers within the meaning of this section.

24 (3) For the purpose of this section, a “carton” is a package or
25 container that contains 200 cigarettes.

26 (f) A district attorney, city attorney, or the Attorney General
27 may assess civil penalties against any person, firm, corporation,
28 or other entity that violates this section, according to the following
29 schedule:

30 (1) A civil penalty of not less than one thousand dollars (\$1,000)
31 and not more than two thousand dollars (\$2,000) for the first
32 violation.

33 (2) A civil penalty of not less than two thousand five hundred
34 dollars (\$2,500) and not more than three thousand five hundred
35 dollars (\$3,500) for the second violation.

36 (3) A civil penalty of not less than four thousand dollars (\$4,000)
37 and not more than five thousand dollars (\$5,000) for the third
38 violation within a five-year period.

1 ~~(4) A civil penalty of not less than five thousand five hundred~~
2 ~~dollars (\$5,500) and not more than six thousand five hundred~~
3 ~~dollars (\$6,500) for the fourth violation within a five-year period.~~

4 ~~(5) A civil penalty of ten thousand dollars (\$10,000) for a fifth~~
5 ~~or subsequent violation within a five-year period.~~

6 SEC. 3. Section 22963 is added to the Business and Professions
7 Code, to read:

8 22963. (a) It is unlawful for any person engaged in the business
9 of selling or distributing cigarettes or tobacco products to ship or
10 cause to be shipped any cigarettes or tobacco products to any
11 person in this state who is not any of the following:

12 (1) A retailer licensed pursuant to Division 8.6 (commencing
13 with Section 22970).

14 (2) An export warehouse proprietor as defined in Section 5702
15 of Title 26 of the United States Code.

16 (3) An operator of a customs bonded warehouse as described
17 in Section 1311 or 1555 of Title 19 of the United States Code.

18 (4) A person who is an officer, employee, or agent of the federal
19 government, or of this state or of a department, agency,
20 instrumentality, or political subdivision of the federal government
21 or this state, when the person is acting in accordance with his or
22 her official duties.

23 (b) It is unlawful for any common or contract carrier to
24 knowingly transport cigarettes or tobacco products to any person
25 in this state reasonably believed by the carrier to be other than a
26 person described in subdivision (a). It is unlawful for any other
27 person to knowingly, or with reason to know, transport cigarettes
28 or tobacco products to any person in this state, other than a person
29 described in subdivision (a).

30 (c) Notwithstanding any other provision of this division, upon
31 discovery by the State Board of Equalization or a law enforcement
32 agency of any cigarettes or tobacco products that have been, or
33 are being, shipped or transported in violation of this section, the
34 State Board of Equalization or the law enforcement agency may
35 seize and take possession of the cigarettes or tobacco products.
36 Any cigarettes or tobacco products seized by a law enforcement
37 agency shall be delivered to the State Board of Equalization, or
38 its designee, within seven days, unless the cigarettes or tobacco
39 products are otherwise required to be used as evidence in an
40 administrative, criminal, or civil proceeding, or as part of an

1 ongoing law enforcement operation. Any cigarettes or tobacco
2 products seized by the State Board of Equalization or delivered to
3 the State Board of Equalization by a law enforcement agency shall
4 be deemed forfeited to the state and the State Board of Equalization
5 shall comply with procedures set forth in Chapter 7.5 (commencing
6 with Section 30435) of Part 13 of Division 2 of the Revenue and
7 Taxation Code.

8 (d) (1) A district attorney, city attorney, or the Attorney General
9 may assess civil penalties against any person, firm, corporation,
10 or other entity that violates this section and may recover the
11 reasonable costs of investigating and prosecuting the action,
12 including expert fees, reasonable attorney's fees, and court costs.
13 The civil penalties shall be assessed according to the following
14 schedule:

15 (A) Upon the first violation, a civil penalty of not more than
16 one thousand dollars (\$1,000).

17 (B) Upon the second violation, a civil penalty of not more than
18 five thousand dollars (\$5,000).

19 (C) Upon the third violation or subsequent violations, a civil
20 penalty of not more than twenty-five thousand dollars (\$25,000).

21 (2) The civil penalties assessed pursuant to this section shall be
22 in addition to any other penalties that may be applicable, including,
23 but not limited to, civil penalties pursuant to Section 22958.

24 (e) For the purposes of this section, the following definitions
25 apply:

26 (1) "Cigarette" has the same meaning as in Section 104556 of
27 the Health and Safety Code.

28 (2) "Tobacco products" has the same meaning as in Section
29 22962.

30 SEC. 4. Section 119406 is added to the Health and Safety Code,
31 to read:

32 119406. (a) It is unlawful for any person engaged in the
33 business of selling or distributing electronic cigarettes (e-cigarettes)
34 to ship or cause to be shipped any e-cigarettes to any person in
35 this state who is not any of the following:

36 (1) A retailer licensed pursuant to Division 8.6 (commencing
37 with Section 22970) of the Business and Professions Code.

38 (2) An export warehouse proprietor as defined in Section 5702
39 of Title 26 of the United States Code.

1 (3) An operator of a customs bonded warehouse as described
2 in Section 1311 or 1555 of Title 19 of the United States Code.

3 (4) A person who is an officer, employee, or agent of the federal
4 government, or of this state or of a department, agency,
5 instrumentality, or political subdivision of the federal government
6 or this state, when the person is acting in accordance with his or
7 her official duties.

8 (b) It is unlawful for any common or contract carrier to
9 knowingly transport e-cigarettes to any person in this state
10 reasonably believed by the carrier to be other than a person
11 described in subdivision (a). It is unlawful for any other person to
12 knowingly, or with reason to know, transport e-cigarettes to any
13 person in this state, other than a person described in subdivision
14 (a).

15 (c) Notwithstanding any other provision of this division, upon
16 discovery by the State Board of Equalization or a law enforcement
17 agency of any e-cigarettes that have been, or are being, shipped
18 or transported in violation of this section, the State Board of
19 Equalization or the law enforcement agency may seize and take
20 possession of the e-cigarettes. Any e-cigarettes seized by a law
21 enforcement agency shall be delivered to the State Board of
22 Equalization, or its designee, within seven days, unless the
23 e-cigarettes are otherwise required to be used as evidence in an
24 administrative, criminal, or civil proceeding, or as part of an
25 ongoing law enforcement operation. Any e-cigarettes seized by
26 the State Board of Equalization or delivered to the State Board of
27 Equalization by a law enforcement agency shall be deemed
28 forfeited to the state and the State Board of Equalization shall
29 comply with procedures set forth in Chapter 7.5 (commencing
30 with Section 30435) of Part 13 of Division 2 of the Revenue and
31 Taxation Code.

32 (d) (1) A district attorney, city attorney, or the Attorney General
33 may assess civil penalties against any person, firm, corporation,
34 or other entity that violates this section and may recover the
35 reasonable costs of investigating and prosecuting the action,
36 including expert fees, reasonable attorney's fees, and court costs.
37 The civil penalties shall be assessed according to the following
38 schedule:

39 (A) Upon the first violation, a civil penalty of not more than
40 one thousand dollars (\$1,000).

1 (B) Upon the second violation, a civil penalty of not more than
2 five thousand dollars (\$5,000).

3 (C) Upon the third violation or subsequent violations, a civil
4 penalty of not more than twenty-five thousand dollars (\$25,000).

5 (2) The civil penalties assessed pursuant to this section shall be
6 in addition to any other penalties that may be applicable.

7 (e) For the purposes of this section, “electronic cigarette” or
8 “e-cigarette” means a device designed to look like a cigarette,
9 cigar, pipe, or other smoking device, or any other nicotine delivery
10 device that is used for the purpose of creating a vapor inhaled by
11 the user, including cartridges, accessories, or liquids used with the
12 device.

13 SEC. 5. Section 30101.7 of the Revenue and Taxation Code
14 is repealed.

15 ~~30101.7. (a) It is the intent of the Legislature in enacting this~~
16 ~~section to facilitate the collection of all applicable state surtaxes,~~
17 ~~sales or use taxes, and eserow and other payment obligations on~~
18 ~~cigarettes sold to residents of the state and to ensure compliance~~
19 ~~with the Prevent All Cigarette Trafficking Act of 2009 (PACT~~
20 ~~Act; Public Law 111-154).~~

21 ~~(b) Except as provided in subdivision (d), no person may engage~~
22 ~~in a retail sale of cigarettes in California unless the sale is a~~
23 ~~vendor-assisted, face-to-face sale.~~

24 ~~(c) For the purposes of this section, the following definitions~~
25 ~~shall apply:~~

26 ~~(1) “Consumer” means a person who purchases cigarettes or~~
27 ~~tobacco products. “Consumer” does not include any person licensed~~
28 ~~under this part or under Division 8.6 (commencing with Section~~
29 ~~22970) of the Business and Professions Code and lawfully~~
30 ~~operating as a manufacturer, distributor, wholesaler, or retailer of~~
31 ~~cigarettes or tobacco products.~~

32 ~~(2) “Delivery sale” means sale of cigarettes or tobacco products~~
33 ~~into and in this state in either of the following cases:~~

34 ~~(A) The consumer submits the order for the sale by means of a~~
35 ~~telephone or other method of voice transmission, the mail, or the~~
36 ~~Internet or other online service, or the seller is otherwise not in~~
37 ~~the physical presence of the consumer when the request for~~
38 ~~purchase or order is made.~~

39 ~~(B) The cigarettes or tobacco products are delivered to the~~
40 ~~consumer by common carrier, private delivery service, or other~~

1 ~~method of remote delivery, or the seller is not in the physical~~
2 ~~presence of the consumer when the consumer obtains possession~~
3 ~~of the cigarettes or tobacco products.~~

4 ~~(3) “Delivery seller” means a person who makes a delivery sale.~~

5 ~~(4) “Face-to-face sale” means a sale in which the purchaser is~~
6 ~~in the physical presence of the seller or the seller’s employee or~~
7 ~~agent at the time of the sale. A face-to-face sale does not include~~
8 ~~a delivery sale.~~

9 ~~(5) “Indian country” shall have the same meaning as provided~~
10 ~~in Section 1151 of Title 18 of the United States Code, and includes~~
11 ~~any other land held by the United States in trust or restricted status~~
12 ~~for one or more Indian tribes.~~

13 ~~(6) “Interstate commerce” means commerce between a state~~
14 ~~and any place outside the state, commerce between a state and~~
15 ~~Indian country in the state, or commerce between points in the~~
16 ~~same state but through a place outside of the state or through any~~
17 ~~Indian country.~~

18 ~~(7) “Tobacco products” shall have the same meaning as~~
19 ~~otherwise defined under this part with the exception of cigars.~~

20 ~~(d) A person may engage in delivery sale of cigarettes or tobacco~~
21 ~~products to a person in California provided that all of the following~~
22 ~~conditions are met:~~

23 ~~(1) The delivery seller has fully complied with all of the~~
24 ~~requirements of Chapter 10A (commencing with Section 375) of~~
25 ~~Title 15 of the United States Code, otherwise known as the Jenkins~~
26 ~~Act.~~

27 ~~(2) The delivery seller obtains and maintains any applicable~~
28 ~~license under this part and under Division 8.6 (commencing with~~
29 ~~Section 22970) of the Business and Professions Code, as if the~~
30 ~~delivery sales occurred entirely within this state.~~

31 ~~(3) The delivery seller complies with any applicable state law~~
32 ~~that imposes escrow or other payment obligations on tobacco~~
33 ~~product manufacturers, including, but not limited to, Sections~~
34 ~~104555 to 104557, inclusive, of the Health and Safety Code.~~

35 ~~(4) The Attorney General may require the delivery seller to~~
36 ~~report to the Attorney General its delivery sales of cigarettes and~~
37 ~~tobacco products to California consumers in the form and manner~~
38 ~~specified by the Attorney General.~~

39 ~~(e) Any violation of this section by any person is a misdemeanor.~~
40 ~~Each offense shall be punishable by a fine not to exceed five~~

1 thousand dollars (\$5,000), or imprisonment not to exceed one year
2 in a county jail, or both the fine and imprisonment. The amount
3 of any fines assessed shall be deposited in the Cigarette and
4 Tobacco Products Compliance Fund.

5 (f) The State Board of Equalization may provide information
6 relative to a seller's failure or attempt to comply with the PACT
7 Act and the Jenkins Act to the Attorney General.

8 (g) The Attorney General or a city attorney, county counsel, or
9 district attorney may bring a civil action to enforce this section
10 against a person that violates this section and, in addition to any
11 other remedy provided by law, the court shall assess a civil penalty
12 in accordance with the following schedule:

13 (1) A civil penalty of not less than one thousand dollars (\$1,000)
14 and not more than two thousand dollars (\$2,000) for the first
15 violation.

16 (2) A civil penalty of not less than two thousand five hundred
17 dollars (\$2,500) and not more than three thousand five hundred
18 dollars (\$3,500) for the second violation within a five-year period.

19 (3) A civil penalty of not less than four thousand dollars (\$4,000)
20 and not more than five thousand dollars (\$5,000) for the third
21 violation within a five-year period.

22 (4) A civil penalty of not less than five thousand five hundred
23 dollars (\$5,500) and not more than six thousand five hundred
24 dollars (\$6,500) for a fourth violation within a five-year period.

25 (5) A civil penalty of up to ten thousand dollars (\$10,000) for
26 a fifth or subsequent violation within a five-year period.

27 (h) This section does not prohibit the lawful sale of a tobacco
28 product that occurs by means of a vending machine.

29 (i) Nothing in this section shall relieve the seller of cigarettes
30 from any other applicable requirement of state law relating to the
31 sale or distribution of cigarettes or tobacco products in this state.

32 (j) The board shall enforce the licensing and tax provisions of
33 this section. Other provisions of this section shall be enforced by
34 the Attorney General.

35 (k) The provisions of this section are severable. If any provision
36 of this section or its application is held invalid, that invalidity shall
37 not affect other provisions or applications that can be given effect
38 without the invalid provision or application.